Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	CC Docket No. 95-116
	)	RM 8535
Telephone Number Portability	)	

COMMENTS OF OMNIPOINT CORPORATION

Omnipoint Corporation ("Omnipoint") files these comments in response to the Commission's Notice of Proposed Rulemaking, ("NPRM") in the above-captioned proceeding. As a competitive entrant in the New York MTA,[1] Omnipoint intends to offer service that will compete against several wireless and wired telephone providers. Omnipoint strongly supports the Commission's conclusion that number portability would benefit consumers and would lead to a more competitive telecommunications market. NPRM at ¶ 7. The Commission should adopt a comprehensive regulatory approach that ensures number portability for users of fixed and wireless telephony and should expeditiously resolve economic and technical issues.

Omnipoint finds that four principles should guide the Commission's decisionmaking as it implements number portability:

1. Strong Service and Service Provider Number Portability Rules

Competition for customers of the wired and wireless telephone incumbents is at the heart of the issue in number portability. With the current numbering plan, this competition is thwarted in at least two ways. First, the costs (both monetary and non-monetary) of a telephone number change discourage customers from switching to another carrier, even if the other carrier's rates

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1 Omnipoint Communications, Inc., a subsidiary of Omnipoint Corporation, holds the Block A PCS license for the New York MTA, call sign KNLF202.

are lower and/or it offers superior service. Second, customers that might otherwise subscribe to a newer, more advanced service like PCS may be reluctant to do so if they must also absorb the costs and inconvenience of adding yet another number to their list of numbers to remember. *See*, "Password Stress Means Memory Overload," The Washington Post, September 3, 1995, at A1 (Americans are overburdened by the collection of numbers, access codes, and passwords that they must remember).

The studies noted at ¶ 22 of the NPRM confirm common sense -- a significant margin of customers are reluctant to switch to an otherwise superior competitive offering because of the hassles of a new telephone number. These customers are, in fact, acting rationally because the lack of number portability today forces on them the burden of a telephone number change.[2] Businesses that consider the choice of changing to a more efficient carrier must factor in the costs of customer dissatisfaction, loss of goodwill, internal confusion, and reprinting of business stationery, cards, etc. Under the current scheme, residential users must also balance the confusion a home telephone number change will cause to family, friends, and employers against switching to a competitive provider.

With an effective number portability scheme, however, these costs are no longer a part of the telephone users' decision to seek a competing provider or to subscribe to an additional service. Instead, the telephone user chooses its carrier on the basis of competitive rates and quality of service.

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2 The Commission's observation at ¶ 22 of the NPRM that "disincentives to changing service providers may be mitigated," does not detract from this point. Simply because some businesses or families do, in fact, move does not mean that those telephone users are unaffected by the costs of a changed number, it only shows that some move despite those costs. Further, the fact that there are area code splits and overlays tells nothing about the level of customer dissatisfaction that those changes create.

Therefore, number portability should be viewed by the Commission as part of its overall effort to increase competition in telephony.[3] Because the current scheme imposes transactions costs as described above, it only favors incumbent providers to the detriment of new entrants. For example, as the Commission noted in its August 18, 1995 First Report on CMRS, the cellular industry is signing up mobile service subscribers at an astounding rate while reducing prices in response to the imminent competition by PCS providers.[4] The Commission also cited estimates that the competitive entry of PCS in the next two years will reduce current cellular prices by as much as 40%.[5] The success of PCS entry depends, in substantial part, on whether these providers can attract a significant share of cellular's embedded customer base through better services and more competitive prices, which, in turn, depends on the cellular customers' willingness to change their mobile service provider. Avoiding the current hassles of a telephone number change for cellular will greatly enhance the competitive impact of PCS.

Service number portability will also encourage PCS-to-local exchange competition. When customers can use their existing telephone number on both the wired and wireless networks, the consumers will seek the best voice telephone service for the money -- the hallmark of a more competitive and diverse telephone network. In addition, the LECs' provision of advanced data transport features (*e.g.*, ISDN) will also face competitive challenges from wireless

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3 *See, e.g.*, Resale and Shared Use, Report and Order, 60 F.C.C. 2d 261 (1976) (subsequent history omitted) (FCC initiates policy favoring resale of common carrier services to encourage competitive rates and services); In the Matter of Implementation of Section 6002(B) of the Omnibus Budget Reconciliation Act of 1993, First Report, FCC 95-317 at ¶45 ("[t]he Commission also expects that PCS generally will inject major new competition into the mobile telecommunications services market . . ."), *and*, ¶ 48 (released August 18, 1995) ("First Report").

4 First Report, at ¶¶ 6, n. 7, 24, 82, and Table 1.

5 *Id.* at ¶ 82.

providers. Number portability will permit users to switch more easily to competitive providers, thereby encouraging more expeditious deployment of wireless data services.

The Commission can and should expeditiously formulate *national* service and service provider number portability regulations. A strong role in these matters is consistent with Congressional mandates,[6] the Commission's public policy objectives in implementing PCS,[7] and its decision to license PCS according to interstate MTA and BTA service boundaries.[8] As the Commission correctly concludes, number portability issues span beyond the boundaries of a single state and are inextricably interstate in nature. NPRM at ¶¶29-31. Therefore, the Commission is amply within its jurisdiction to regulate number portability issues on a uniform nationwide basis.

Omnipoint believes that generally the states' efforts in number portability, described in the NPRM at ¶¶ 14-16, are important and provide a testbed for resolution of many technical

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6 47 U.S.C. § 151 (one of the purposes of federal regulation is to facilitate the development of a "rapid, efficient, Nation-wide . . . communications service . . .); *Id.* at § 157(a) ("It shall be the policy of th United States to encourage the provision of new technologies and services to the public."); *Id.* at § 332(a)(3) (In managing spectrum for mobile services, the Commission shall consider whether its actions will "encourage competition and provide services to the largest feasible number of users.").

7 *See*, Memorandum Opinion and Order, 9 FCC Rcd. 4957, 4959 (1994) (FCC finalizes PCS service rules on reconsideration in order "to foster rapid creation of a competitive market to deliver these new mobile digital voice and data services to the American public."); First Report at ¶¶ 45, 48.

8 The Commission chose larger MTA and BTA service boundaries (as opposed to the smaller MSA and RSA boundaries used in cellular service) in order for a single mobile provider to maximize the efficiencies associated with larger coverage areas. Memorandum Opinion and Order, 9 FCC Rcd. at 4987-88. The results of the Block A and B licenses, in which three major players (AT&T Wireless, WirelessCo, and PCS PrimeCo) established superregional boundaries through the aggregation of MTAs, is further evidence that competitive entry in telephony requires an interstate approach.

number portability issues, but they should not substitute for a national regulatory approach. Number portability solutions made at the national level are important to avoid interstate systems from disparate state regulatory regimes and because number portability itself requires that carriers across the country develop compatible solutions. If necessary, the Commission should preempt state regulations inconsistent with its national standards. *See*, Computer & Communications Indus. Ass'n v. FCC, 693 F.2d 198, 214 (D.C. Cir. 1982), *cert. denied,* 461 U.S. 938 (1983) ("when state regulation of intrastate equipment or facilities would interfere with the achievement of a federal regulatory goal, the Commission's jurisdiction is paramount, and conflicting state regulations must necessarily yield to the federal regulatory scheme.") (footnotes omitted).

2. Large Geographic Coverage

Number portability regulations should ensure that customers can retain their telephone numbers even when their geographic location changes significantly. The greater the geographic coverage, the more meaningful are the portability benefits to the consumer. Conversely, portability limited simply to NPA or NXX areas would be insufficient. Rather, the Commission should strive to ensure that portability is available to customers on a regional basis, such as MTAs, to offer businesses and residential users meaningful service and service provider alternatives under the number portability scheme.[9] Omnipoint encourages the Commission to view national portability as a long term goal, with regional number portability as a near-term goal.

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9 Number portability on an MTA basis allows consumers the benefit of competition between carriers in an entire commercial region. As the Commission noted, "MTAs and BTAs were designed by Rand McNally based on the natural flow of commerce." Second Report and Order, 8 FCC Rcd. 7700, 7732 (1993). Further, MTAs are more likely to meet location portability needs than smaller geographic areas not based on commercial traffic.

Omnipoint recognizes that location portability on a national basis may not be feasible at this time. However, the Commission should explore ways to encourage location portability. For example, the Commission could require the wireline LECs to implement non-geographic NPAs in addition to the 500 service access codes, which are confined to a particular service. In addition, Omnipoint has found that roaming through the use of Home Location Register/Visiting Location Register ("HLR/VLR") with sufficient vlr capacity can provide some location number portability for customers of two cooperating carriers The Commission could consider the provision of location portability through improved VLR capacity for mobile carriers.

3. Implementation Date Certain

The Commission should set a date certain for fixed and wireless number portability. It should not rely on market forces to resolve the issues because, as described above, it is the most powerful incumbents in telephony today that have a vested interest in impeding number portability for anticompetitive reasons. Further, if the Commission decides to delegate the resolution of certain issues to industry task forces and organizations, it should also set reasonably expeditious timetables for such groups to resolve those issues. As number portability bears directly on the impact of competitors in the marketplace, an implementation date certain should be one of the Commission's primary goals.

4. Costs of Implementation

Each carrier should be obligated to pay the costs of improving its own networks and equipment. For example, the incumbent LECs should not be permitted to foist the costs of improving the LECs' facilities on others or otherwise discriminate against competitive entrants. Of course, the Commission should ensure that all providers pay their fair share of common costs. However, the LECs should not be found to use the allocation of common costs as a subterfuge for the improvement of their own facilities at the expense of others. In this way, providers with cost-efficient networks will not be forced to pay for competitors with less efficient networks, and their customers can benefit from lower cost services

CONCLUSION

Omnipoint urges the Commission to adopt number portability regulations for wireline and wireless carriers consistent with the guidelines recommended above.

Respectfully submitted,

OMNIPOINT CORPORATION

By: 

Mark J. O'Connor

Piper & Marbury L.L.P.
1200 19th Street, N.W.
Seventh Floor
Washington, D.C. 20036
(202) 861-3900

Its Attorney

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